VIRGINIA LAW REGISTER

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Since our summary in the June Number of the REGISTER the publication of the Acts of the General Assembly for 1918 has been concluded, and we continue our summary of, or reference to such acts as we think are of importance.

Summary of the Acts of General Assembly of 1918 Which Appear to Be Important—Concluded.

On page 528 a valuable act providing for the use of probation and the suspension of sentence in criminal and juvenile courts. Whilst this act in its title seems to confine its jurisdiction to probation and criminal and juvenile courts, the act itself provides for its terms to apply to judges of all courts of record having jurisdiction of criminal cases and police justices.

On page 533 an act authorizing district or city school boards to borrow money on short time loans.

On page 534 an act to provide for the issuance of shares of capital stock of corporations organized under the laws of this state without nominal or par value.

On page 535 an act to regulate the situs of taxation of bank stock.

On page 536 an act prohibiting the playing or loitering in any public pool rooms or billiard rooms located outside of the corporate limits of towns and cities, of minors.

On page 539 an act providing when the defense of death by suicide can be made in any action, motion or suit on life insurance policies and to define the period after which such policies shall be incontestable. On same page, an act prescribing the style of type in which conditions and restrictive provisions of insurance policies shall be printed, and to define the time (not more than one year) in respect to which insurers may limit the

right to institute suit or action upon such policies and regulate the filing of the proof of loss.

On page 540 an act to permit public officers to engage in war service without thereby vacating their offices, and to provide for the designation of acting officers to temporarily perform the duties of regular officers, while so engaged.

On page 541 a most valuable act making uniform the law relating to partnerships. This act is on a line of the uniformity of legislation amongst all the states and seems to be carefully drawn and admirably conceived.

On page 556 an act providing for clearing trees and underbrush from the sides of public roads. This act for some reason is directed not to apply to macadam water-bound roads.

On page 559 is a long-needed and seemingly excellent act to reach the so-called nonresident tax dodger. This act provides that any person who has had his actual or habitual place of abode in this State for the larger portion of twelve months next preceding the 1st day of February in each year, shall be deemed a resident of this State for purposes of taxation, together with other provisions in regard to changing residence, etc., which seem to cover this long-needed check on tax dodging.

On page 561 an act to prohibit advertising concerning certain so-called private diseases; and on the same page an act providing additional remedies for the collection of taxes.

On page 564 an act to provide for the continuance of all proceedings, civil or criminal, in which any party thereto is engaged in the military or naval service of the United States.

On page 569 an act to raise revenue, etc., for the State Highway System, for the maintenance of schools, and for the prevention and eradication of tuberculosis, and to extend the work of the State Board of Health.

On page 572 an act in regard to the fees of attorneys for the Commonwealth.

On page 576 an act relative to the temporary appointment of circuit judges.

On page 578, and for forty-two pages thereafter, is the amended Mapp Act, which is the old prohibition act amended in several important particulars. Our views upon these amend-

ments, one of which is to cure the decision of the Court of Appeals in regard to drinking in a curtilage or outbuilding to a man's home, cannot be expressed in what might be deemed by some people proper language, but then our views on this whole "cartographical" legislation are probably as extreme on one side as the legislation is on the other, and we leave the act to be perused by those who desire to see to what extremes the legislation of a once old conservative Commonwealth can be carried.

On page 622 is the celebrated Dog Act, which we welcome as an excellent step in the right direction.

On page 624 is an act to segregate to localities the tax upon shares of stock of banks, banking associations, trusts and security companies.

On page 627 an act in regard to fees of justices, attorneys for the Commonwealth, clerks, sheriffs, etc.

On page 637 is the Virginia Workman's Compensation Act, which requires careful perusal.

On page 662 is an act aimed at the small loan sharks, which seems to be a very excellent one.

On page 670 is a very drastic act aimed at prostitution and its accompaniments. We may comment on what seems to us one of the unusual hardships of this act at some later time.

On page 672 an act in regard to commission merchants, to a certain extent placing them under the investigation of the Commissioner of Agriculture.

On page 673 an act to amend Section 1 of the act imposing public duties on heat, light, power, water and telephone companies, and providing for the control and regulation of such companies by the State Corporation Commission, approved March 27th, 1914.

On page 676 the celebrated "Blue Sky" Law.

On page 685 the Appropriation Bill.

On page 752 an act to provide (in certain cases) compulsory attendance of children between the ages of 8 and 12 years and to repeal an act entitled "An act to provide (in certain cases) for compulsory attendance," etc.

On page 756 an act amending the act of March 4th, 1890, to

regulate the hours of labor in factories and manufacturing establishments, where females and children under fourteen years of age are employed as operatives.

On page 759 an act making it a misdemeanor for a husband to desert or neglect his wife, or for a parent to desert or neglect his children, is passed, repealing the former act, and is a decided improvement upon it.

On page 762 an act amending the various acts regulating the practice of medicine and surgery.

On page 765 an act prohibiting the recordation of plats for the subdivision of land into lots showing on said plats, streets and alleys within or within fifteen miles from the limits of any city having a population of not less than 60,000 nor more than 110,000 inhabitants, except in conformity with plan provided by such city. This appears to us to be a rather drastic act and would practically prohibit the laying off and foundation of any city within 15 miles of any other city with a population of not less than 60,000 nor more than 110,000 inhabitants.

On page 769 is an act amending the various acts in regard to automobiles, which applies to Section 23; and on the next page is an act amending Section 15 of the automobile act. All automobile owners should carefully read these two amendments.

On page 771 is an act for the prevention of blindness from ophthalmia, neonatorum, which ought to be perused with great care by midwives, nurses, maternity homes or hospitals, parent, relative and person attending on or assisting in any way whatsoever any infant, or the mother of any infant at childbirth. It seems to us that this act might have given the formula of the two drops of the solution to be instilled immediately upon birth, in the eyes of the new-born babe. It is a very simple one.

On page 776 an act amending the act authorizing the employment of convict labor on roads.

On pages 783-84-85-86-87-88 and 89 are eight proposed amendments to the Constitution; and interlarded in the midst of them on page 788 is an act adopting the "dogwood" as the floral emblem of the State of Virginia. If we were not afraid

of the wrath of our numerous friends in the Legislature we would suggest, remembering the story of Midas, that the *reed* might not have been an unfit emblem for the body itself, in respect to some of the Acts.

National Child Labor Law Held to Be Unconstitutional.

In commenting upon the decision of the lower court in this case some time since V. L. R., N. S., p. 459 we expressed the opinion that the lower court's decision should be sustained and would be sustained by the Supreme Court of the United States. As we stated then, and as we repeat, no well thinking man can fail to regret the use of child labor and no one can condemn more heartily than we do the abuse of child labor in the various States of the Union; but we believed then and we are glad to find that the Supreme Court of the United States has held, that this law was a clear invasion of the rights of the states to control their own local matters. The daily press stated that the court's action caused the utmost surprise. This may be true to those who have noticed how the Supreme Court generally got around the rights of the States by that *deus ex machina* called the Police Power, but in this instance the court did not invoke the Police Power but held that the rights of the states were more important than any law affecting child labor. The opinion of the majority was delivered by Mr. Justice Day, with whom Chief Justice and Justices Vandevender, Pitney and McReynolds agreed. In the dissenting opinion Justices Holmes, Brandeis, Clark and McKenna concurred.

The suit was one brought in the Federal Court for the Western District of North Carolina by one Dagenheart, whose children were employed in a mill in Charlotte, North Carolina. Mr. Dagenheart sought an injunction to prevent the concern from discharging his children, and the lower court granted the injunction, from which the Government appealed, with the result as shown above.

Mr. Justice Day in delivering the opinion of the Court said in part:

"The controlling question for decision is, 'Is it within the authority of Congress in regulating commerce among the States to prohibit the transportation in interstate commerce of manufactured goods, the product of a factory in which, within thirty days prior to their removal therefrom, children under the age of 14 have been employed or permitted to work, or children between the ages of 14 and 16 have been employed or permitted to work more than eight hours in any day, or more than six days in any week, or after the hour of 7 o'clock P. M. or before the hour of 6 o'clock A. M.?'

"To sustain this statute would not be in our judgment a recognition of the lawful exertion of Congressional authority over interstate commerce, but would sanction an invasion by the Federal power for the control of a matter purely local in its character, and over which no authority has been delegated to Congress in conferring the power to regulate commerce among the States."

Justice Day continuing said:

"All will admit that there should be limitations upon the right to employ children in mines and factories. That such employment is generally deemed to require regulation is shown by the fact that every State in the Union has a law limiting the right thus to employ children.

"We have neither authority nor disposition to question the motives of Congress in enacting this legislation. The purposes intended must be attained consistently with constitutional limitations, and not by an invasion of the powers of the States. This court has no more important function than that which devolves upon it the obligation to preserve inviolate the constitutional limitations upon the exercise of authority, Federal and State, to the end that each may continue to discharge, harmoniously with the other, the duties intrusted to it by the Constitution.

"In our view, the necessary effect of this act is, by means of a prohibition against the movement in interstate commerce of ordinary commercial commodities, to regulate the hours of labor of children in factories and mines within the States, a purely State authority. Thus the act in a twofold sense is repugnant to the Constitution. It not only transcends the authority delegated to Congress over commerce, but also exerts a power as to a purely local matter to which the Federal authority does not extend.

"The far-reaching result of upholding the act cannot be more plainly indicated than by pointing out that if Congress can thus regulate matters intrusted to local authority by prohibition of the movement of commodities in interstate commerce all freedom of commerce will be at an end, and the power of the States over local matters may be eliminated, and thus our system of Government be practically destroyed."

Justice Day thus pointed out that the making of goods or the mining of coal were not in themselves commerce, even though the goods or the coal were afterward to be shipped in interstate commerce. He cited this in support of his argument that the law in effect aims "to standardize the ages at which children may be employed in mining and manufacturing."

"If the mere manufacture or mining were part of interesting commerce," Justice Day said, "all manufacture intended for interstate shipment would be brought under Federal control to the practical exclusion of the authority of the States, a result certainly not contemplated by the framers of the Constitution when they vested in Congress the authority to regulate commerce among the States."

In the dissenting opinion, Justice Holmes stated that Congress in his judgment was clearly within its rights, as defined by the Constitution, in enacting the law, even if it constituted interference with the individual rights of States to regulate commerce.

"The national welfare," said Justice Holmes, "is higher than the rights of any State or States, and Congress was clearly justified in using all its efforts along that line."

Justice Holmes expressed surprise that this question of the right of Congress to invade State rights of commercial control should have entered into the decision. He pointed out that in the oleomargarine case, various cases under the Sherman anti-trust law, and under the Pure Food and Drug act, as well as under the Mann act, the Supreme Court had decided that in the broad general interest of the nation, Congress had a right to trample upon the individual rights of the States.

Railroad Employees. Assumption of Personal Risk against Public Policy.

A very important opinion was handed down by Justice Blackmar in the Appellate Division of the Second Department in Brooklyn, New York, in the last two or three weeks in the case of *Oscar Fried* v. *New York, New Haven and Hardford Railroad.* This case is remarkable in more ways than one. It was tried three times and the last verdict was given for $55,000.00, probably the largest recovery for personal injuries known; and the amount of the recovery is a small matter in view of the decision of Justice Blackmar, which if sustained adds another to the large and rapidly growing list of contracts against public policy. This was an action brought under the Federal Employers' Liability Act, and the defendant introduced a contract signed by the plaintiff releasing the Company from liability for accident or injury to himself, but the Justice declined to allow the contract to be pled as a defense, stating the agreement is not a contract for these three reasons—namely: "First, it does not purport on its face to be a contract; second, it is supported by no consideration, for it is not a part of the plaintiff's contract of employment. The plaintiff's signature was obtained long after he was employed; third, it is against public policy for an employing railroad company to contract with an employee to relieve itself from liability for negligence, imposed by law."

If this decision of Judge Blackmar is sustained by the Supreme Court of Appeals, as we are inclined to think it will be, it certainly makes the Federal Employers' Liability Act one whose value to employees can hardly be overestimated. We have always believed that sound reason was against permitting any corporation or person to enter a contract with another by which it relieved itself from liability for negligence by law. From the trend of the decisions of the Supreme Court of the United States we believe that Justice Blackmar will be sustained.

Dry Law for Soldiers.

As might be expected, however, the Supreme Court of the United States practically upheld the validity of the Federal Statutes prohibiting the sale of alcoholic liquors to soldiers, in declining to review the proceedings convicting one O'Sullivan, a hotel proprietor of Sault Ste Marie. The propriety and legality of this act, it seemed to us, could not be called in question. Certainly the Federal Government has absolute power to control and regulate its army and the soldiers therein and we can very readily see why the Supreme Court of the United States did not deem it necessary even to hear argument.

Army—Compulsory Military Duty—Foreign Service.

Our associate Editor, Mr. Beirne Stedman, must and should be gratified to find that the opinion he so earnestly and vigorously expressed in his Editorial in our September No. 1917, p. 371, Vol. III, of the REGISTER has been sustained by the Supreme Court of the United States in the case of *Cox* v. *Wood, Commandant, etc.* In this case the Court unanimously decided that Congress has the power to compel military service and the duty of the citizen to render such service when called for is derived from the authority given to Congress by U. S. Court, Act 1, § 8, to declare war and to raise armies. The unanimous opinion of the Court, the Chief Justice delivering it, is brief and to the point and disposes of the "elaborate contentious arguments" as the Court styles them in the few words following:

> "It is indisputable that they all rest upon the assumption as to the exclusive character of the delegation made to Congress by the militia clause (art. 1, § 8), and the restriction as to the use of the military force raised under such delegation, resulting from the provisions of the clause relied upon; that is, the prohibition of compulsory service beyond the territorial limits of the United States. But we are of opinion that we are not now called upon to consider these contentions as a matter of original inquiry because the fundamental mistake upon which all the arguments rest and the error in the conclusion which they are advanced to sustain were pointed out and conclusively established by the de-

cision sustaining the Selective Draft Law recently announced in the Selective Draft Cases, supra. This result is apparent, since, on the face of the opinion delivered in those cases, the constitutional power of Congress to compel military service which the assailed law commanded was based on the following propositions: (a) That the power of Congress to compel military service and the duty of the citizen to render it when called for were derived from the authority given to Congress by the Constitution to declare war and raise armies. (b) That those powers were not qualified or restricted by the provisions of the militia clause, and hence the authority in the exercise of the war power to raise armies and use them when raised was not subject to limitations as to use of the militia, if any, deduced from the militia clause. And (c) that from these principles it also follows that the power to call for military duty under the authority to declare war and raise armies, and the duty of the citizen to serve when called, were coterminous with the constitutional grant from which the authority was derived, and knew no limit deduced from a separate, and, for the purpose of the war, wholly incidental if not irrelevant and subordinate, provision concerning the militia, found in the Constitution. Our duty to affirm is therefore made clear."

The case is rendered remarkable by the stinging rebuke given by the Court to the counsel for the appellant—whose brief must have been a most unfortunate one. The Government suggested that the brief should be stricken from the files as containing impertinent and scandalous passages. Such a consummation might have been devoutly wished and we have no doubt would have been heartily concurred in, had the attorney who filed it known what was coming. "No," the Court in effect said, "No," let it remain as an awful example," and disposes of it in the following paragraphs—unequalled we believe in all the history of the Courts:

"Considering the passage referred to, and making every allowance for intensity of zeal and an extreme of earnestness on the part of counsel, we are nevertheless constrained to the conclusion that the passages justify the terms of censure by which they are characterized in the suggestion made by the Government. But, despite this conclusion, which we regretfully reach, we see no useful purpose to be subserved by granting the motion to strike. On the contrary, we think the passages on their faces are so obviously intemperate and

> so patently unwarranted that if, as a result of permitting the passages to remain on the files, they should come under future observation, they would but serve to indicate to what intemperance of statement an absence of self-restraint or forgetfulness of decorum will lead, and therefore admonish of the duty to be sedulous to obey and respect the limitations which an adhesion to them must exact."

How calm! how neat! how awful the rebuke and how deserved. Today in this hour of the Nation's agony, when our sons and loved ones are fighting for their country and for the world's salvation what must be the condition of the advocate's mind, who in attempting to throttle the arm of the Government should so far forget himself as to be impertinent and scandalous in his argument before the greatest tribunal in the world and in such a cause?

Judgment: Full Faith and Credit—State Judgment in Federal Court—Sane and Insane.

In the case of *Garnet* v. *Fenner* the Supreme Court of the United States in a decision handed down May 6th, 1918, seems to settle the question which has been much before the Courts in the now celebrated Chaloner case.

Garnet was adjudged of unsound mind in Louisiana. He escaped from custody in that State upon a *habeas corpus* from a Louisiana Court, subsequently held to be without jurisdiction. He moved into Tennessee and by the Courts of that State was declared to be of sound mind. Armed with this decree he filed a bill in Louisiana to require the executor of his mother's estate in that State to pay over to him his share in the same, claiming that full faith and credit should be given to the decree of the Tennessee Court. But the Louisiana law providing that the interdiction against a lunatic could only be set aside and he be allowed to resume the exercise of his rights by the same solemnities which were observed in pronouncing the interdiction, the Supreme Court held that Garnet could not pursue his rights across country, but proceed along the road the Louisiana law provides. This may be all right! doubtless is, but it seems rather queer that a man may be sane in one State and insane in another.